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**Testimony of Susan O. Storey
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**DIVISION OF PUBLIC DEFENDER SERVICES
APPROPRIATIONS COMMITTEE BUDGET HEARING
February 23, 2009**

Senator Harp, Representative Geragosian, members of the Appropriations Committee, I appreciate having the opportunity to discuss the Governor's proposed budget recommendations with members of the Committee, especially at a time of economic crisis when the choices that will be made are so critical and impact so many Connecticut residents.

I would also preface my remarks by stating that, last October, I had filed requests for budget expansion options with OPM. These expansion requests were directed toward securing more attorney staff to represent clients in serious felony and capital cases in the Judicial District courts, where imbalance of resources exists between public defender and prosecutor staff. I fully understand that this request for expansion for resources that are legitimately necessary cannot be honored at this time while the state is in economic crisis, but I do think it underscores my request that Agency resources and staff not be cut.

The Governor's Budget proposes several cuts to the Division of Public Defender Services Budget that could be detrimental to the Agency as well as to the basic principles of fairness and equal justice within the State's Criminal Justice System.

First the Governor recommends closing two Connecticut courthouses, Bristol GA 17 and the Meriden court which includes GA 7. The Governor also recommends that such closing would allow 5 positions to be cut from the Public Defender Services' Budget for a total of \$438,000, roughly equal to 5 attorney positions. While closing the courthouses may save some costs, merely shifting the representation of clients from these courts to neighboring courts does not negate the need for representation of approximately 2500 Meriden clients per year and approximately 1500 Bristol public defender clients. The GA public defender offices that are proposed to absorb these cases are already at or

above Commission Guidelines of 500 new cases per attorney per year set in accordance with the settlement agreement in Rivera v. Rowland.

In addition, the Governor recommends eliminating 5 vacant positions that were reported by the Agency in June 2008 for a total of \$253,000. Two of these positions are no longer vacant due to Public Defender Commission policy of filling vacancies when constitutionally necessary for the representation of clients, or when the critical demands of administering the Agency require filling such vacancy. Only three vacancies now exist: Budget Director, 1 Habeas Unit attorney, and 1 Habeas Unit clerical support person.

If these ten positions were cut, such reduction would negate the benefit of the 10 additional positions gained in the last legislative session per PA-08-51. These positions were specifically added to make it possible for the Agency to address the additional representational responsibilities demanded by reforms to the persistent offender laws and to the increased penalties for certain felony crimes, such as home invasion.

The Governor's Budget further recommends reducing the Special Public Defender Contractual and Non-Contractual Accounts by 10% each. This would result in a reduction of \$300,000 and \$580,000 respectively. Assigning cases under contract to special public defenders is the most economical way to appoint counsel in conflict cases. The Agency implemented procedures in 2006 to more strictly oversee assignments of conflict cases to special public defenders and recently instituted better auditing procedures for both accounts. However, the Agency does not have complete control over the numbers of cases assigned to special public defenders as conflict of interest cases are ethically required to be assigned outside counsel. We expect, in this economic downturn, that more people accused of crimes will not be able to afford counsel and will need assistance from public defender offices throughout the state. The trend of expenditures in this account has been steadily increasing from 2.5 million in 2006 to 3.1 million in 2008 and 2009.

Similarly, the Agency does not have complete control over how many cases must be assigned to special public defenders on a non-contract hourly basis. Some serious felony juvenile and adult cases, appeals, and capital cases are not subject to contract in accordance with the settlement agreement in Rivera v. Rowland. Of most concern are the capital cases now pending at various stages throughout the state. Capital cases require that 2 attorneys be appointed at each stage of the case at a rate of \$100 per hour. Although this rate is still far below the federal capital rate of \$170 per hour, capital trials, appeals, and post-conviction hearings require enormous amounts of resources and legal fees. While the Agency in the past 2 years has been able to reduce spending in this account, it is not clear that these savings are a permanent trend. Expenditures in this account have been fairly level over the past few years from 5.8 million in 2006 to 5.9 million in 2008. Approximately 5.7 million is projected for 2009.

Additionally, a reduction of 10% to the expert witness account for a total of \$160,000 may be achievable but is also largely dependent on the requirements of capital case

preparation, trials and habeas proceedings. Expenditures in this account have also been fairly level over the past few years at 1.75 million, but these figures do not include expenditures for the Racial Bias in Capital Cases Study in which there is ongoing litigation.

I also want to make this Committee aware on behalf of many members of the Division, that our Agency has saved more than \$24,000 to date through voluntary furloughs that began as soon as the Governor made her request that Commissioners and Agency heads consider taking unpaid furlough days.

We are aware that this Committee has a difficult task in deciding which budget items must be cut in difficult economic times. We would request as a priority that you not cut permanent positions from our budget, and that we are allowed to achieve savings by freezing hiring or delays in hiring, through leaves of absence, furloughs, client reimbursement and other measures. As the numbers of unemployed persons in the state increase, we fully expect that the numbers of people that we represent will likewise increase, and hope that you will continue your support for equal justice in the state's criminal justice system.